

TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

**TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD**

AGENDA

WEDNESDAY, DECEMBER 15, 2010

9:30 AM

For information regarding procedures for monitoring or participating in Town Council Meetings, please refer to the end of this agenda.

I. CALL TO ORDER AND ROLL CALL

Mayor Jack McDonald
David A. Rosow, President
Gail Coniglio, President Pro Tem
William J. Diamond
Richard M. Kleid
Robert N. Wildrick

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR JACK McDONALD

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE (Another opportunity for communications from citizens will be offered immediately after the lunch break.)

VI. APPROVAL OF AGENDA

VII. PUBLIC HEARINGS

- A. RESOLUTION NO. 131-10 RESOLUTION NO.131-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described (Breakers Hotel, One South County Road) and Stating That the Subject Property Meets the Criteria Set Forth in Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[John Page, Director of Planning, Zoning, and Building]

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VIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 26-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-2 to Add Clarifying Language Relative to the Rules of Construction of the Zoning Ordinance; Sections 134-36, 134-145, 134-171, 134-327, 134-330, 134-561, 134-1576 and 134-1577 to Change the Reference from Building Official to Director of the Planning, Zoning and Building Department; Section 134-7 to Include Site Plan Review in Penalties for Violation; Sec. 134-235 to Not Allow Dimensional Waiver Approval If There Is Neighbor Objection; Section 134-326 to Provide Additional Requirements for Administrative Site Plan Review; Sections 134-416, 134-417, 134-418 and 134-419 to Provide Language That Allows Expansion of Nonconforming Multi-family and Commercial Buildings or Structures Provided it Does Not Make the Buildings or Structures More Nonconforming; Sections 134-446 by Modifying the Section Title and Clarifying That Residential Development and Redevelopment Is Required to Meet Density Requirements in the Town's Comprehensive Plan in Certain Situations; Section 134-888 by Expanding Accessory Commercial Uses Allowed for the Town Golf Course and Tennis Court Facilities; Sections 134-942, 134-997 and 134-1052 to Replace the Word "May" with "Shall" in Order to Require Site Plan Review in R-C, R-D(1) and R-D(2) Zoning Districts and Correct a Cross Reference; Sections 134-949, 134-1005, and 134-1061 to Eliminate the Reference to Cubic Content in the R-C, R-D(1) and R-D(2) Zoning Districts as That Term Does Not Apply in Those Zoning Districts; Section 134-1732 to Provide a Cross Reference to the Fee for a Temporary Storage Unit, Increase The Maximum Length of Time for Said Unit, Limit the Number of

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Times Allowed per Calendar Year and a Suspension Provision from this Regulation During a State of Emergency; Sections 134-2172, 134-2179 and 134-2237 to Change the Required Parking Stall Dimension And/or Drive Aisle Width to Be Consistent with Other Sections of the Code; Sections 134-2296 and 134-2329 by Eliminating the Specific Costs for Parking Permits and Providing a Reference to the Fee Schedule; Section 134-2409 to Correct Typographical Errors in the Residential Political Sign Section of the Code; Section 134-2446 to Create a Section to Include a Political Sign Provisions in the Commercial Zoning Districts; Section 134-1107 and 134-1109 to Permit Office Uses on the First Floor in the Two Hundred Block of Peruvian Avenue and Bradley Place in the C-TS Zoning District; Section 134-797, 134-847, 134-898, 134-953, 134-1009 and 134-1065 to Increase the Maximum Height of the Finished Floor from Grade and Require Building Permits to Fill and Raise the Grade of Property in the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Residential Zoning District; Section 134-1733 by Creating Said Section for Regulations for the Screening of Existing and Future Dumpsters; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

[John Page, Director of Planning, Zoning, and Building]

B. First Reading

None

IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions and Waivers

1. Waiver of Section 42-199, Hours of Construction Work, at 221 Worth Avenue (Per Email Dated November 24, 2010, From James Paine).

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2. Waiver of Section 42-199, Hours of Construction Work, at 265 Sunset Avenue (Publix Supermarket) (Per Letter Dated November 23, 2010, From Maura Ziska).

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a. Presentation from Publix (Including Alternate Store Possibility).

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business – Less than 15 Minutes

None

2. New Business – Less than 15 Minutes

a. **SITE PLAN REVIEW #11-2010 WITH VARIANCES**

The application of Trillion, Inc.; relative to property commonly known as **309 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Site Plan Approval to permit modification to a 65.72 sq. ft. bird aviary. The variances required are as follows: to permit the bird aviary with a lot coverage of 76.67% in lieu of the 76.07% existing and 75% maximum permitted; to permit a rear setback of 0 feet in lieu of the 4.75 foot existing and the 10 foot minimum required.

[Attorney: M. Timothy Hanlon]

[ARCOM Recommendation: Approval of the variance will not cause negative architectural impacts. Carried 4-3. However, the Commission deferred the architecture for further study. Carried 7-0.]

b. **SPECIAL EXCEPTION #21-2010** The application of Wells Fargo Bank, NA; relative to property commonly known as **255 South County Road**; described as lengthy legal description on file; located in the C-TS/C-B Zoning Districts. The applicant is requesting a Special Exception to allow a new 10,794 square foot bank (“Wells Fargo Bank, NA”) which merged with Wachovia Bank, NA to operate in its existing location. This requires Town Council Approval and a finding that the new bank is “town-serving”. [Attorney: Maura A. Ziska]

c. **SPECIAL EXCEPTION #22-2010** The application of Wells Fargo Bank, NA; relative to property commonly known as **254 Sunrise Avenue**; described as The North 100 feet of lots 60 through 65, of Sunrise Avenue Addition, No. 2, Town of Palm beach, according to the Plat thereof recorded in Plat Book 8, Page 69, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning Districts. The applicant is requesting a Special Exception to allow a new 1,999 square foot bank (“Wells Fargo Bank, NA”) which merged with Wachovia Bank, NA to operate

in its existing location. This requires Town Council Approval and a finding that the new bank is “town-serving”. [Attorney: Maura A. Ziska]

- d. **SPECIAL EXCEPTION #23-2010** The application of Wells Fargo Bank, NA; relative to property commonly known as **411 South County Road**; described as lengthy legal description on file; located in the C-TS/C-WA Zoning Districts. The applicant is requesting a Special Exception to allow a new 9,598 square foot bank (Wells Fargo Bank NA) which merged with Wachovia Bank, NA to operate in its existing location. This requires Town Council Approval and a finding that the new bank is “town-serving”. [Attorney: Maura A. Ziska]
- e. **VARIANCE #23-2010** The application of Wells Fargo Bank, NA, Trustee of the 190 South Ocean Land Trust (Llwyd Eccelstone); relative to property commonly known as **190 S. Ocean Blvd.**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting a Variance to allow construction of a sheet pile toe wall approximately 18 feet east of the Town’s bulkhead line which is not permitted in order to protect the existing bulkhead. [Attorney: Raymond W. Royce]
- f. **VARIANCE #24-2010** The application of Villa Artemis, LLC; relative to property commonly known as **656 North County Road**; described as lengthy legal description on file; located in the R-AA Zoning District. The applicant is requesting a the following Variances: 1. To demolish more than 50% of a nonconforming guest house and rebuild it on the same foot print with a 20.4 foot north side yard setback in lieu of the 30 foot minimum required. 2. To allow a second guest house where only one guest house is permitted by code. [Attorney: Maura A. Ziska]

3. Old Business – More than 15 Minutes

None

4. New Business – More than 15 Minutes

None

D. Other

1. Demolition Approval Procedures; Establishment of “Special Meetings”; Recommendations From Landmarks Preservation Commission.

[John Page, Director of Planning, Zoning, and Building]

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2. Proposed Comprehensive Plan and Zoning Text Amendments for a Proposal to Allow Nonconforming Buildings and Structures to be Rebuilt. [John Page, Director of Planning, Zoning, and Building]

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X. ANY OTHER MATTERS

XI. ADJOURNMENT

PLEASE TAKE NOTE:

- No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.
- The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio." If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting under "Agendas, Minutes, and Audio."
- If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.
- A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS: Any citizen is entitled to be heard on an official agenda item under the section entitled "Public Hearings," subject to the three minute limitation.

COMMUNICATIONS FROM CITIZENS: Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation.

OTHER AGENDA ITEMS: Any citizen is entitled to be heard on any official agenda item when the Town Council calls for public comments, subject to the three minute limitation.

Town Council Meetings are public business meetings and, as such, the Town Council retains the right to limit discussion on any issue.

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO.131-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described (Breakers Hotel, One South County Road) and Stating That the Subject Property Meets the Criteria Set Forth in Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated November 26, 2010, from John Page
- Resolution No. 131-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning and Building

Re: Tax Abatement for: Breakers Hotel, One South County Road : Phase 3- Room
Renovation
Resolution No.131-10

Date: November 26, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No.131-10, granting Tax Abatement to the property at One South County Road (The Breakers).

BOARD OR COMMISSION RECOMMENDATION

The Landmarks Commission has approved all changes to this property using the Secretary of Interior (Federal) Standards for rehabilitation as required in the Tax Abatement program.

GENERAL INFORMATION

1. Project Summary: The above mentioned applicant applied for participation in the Town's Tax Abatement Program. Phase 3 renovations consisted of 95 rooms, including window replacements, on the 1st-5th floors in the southeast section of the hotel.

One South County Road is listed on the National Register of Historic Places

2. Town Council approval is required to grant this abatement and forward same to Palm Beach County.

FUNDING/FISCAL IMPACT

Action will abate ad-valorem Town of Palm Beach property tax increase for a period of ten years. It should be noted that the only new, incremental tax increase generated by the renovations is to be abated. The Breakers spent \$13,003,584 on Phase 3 improvements. Full value assessment will be applicable after the ten year program.

TOWN ATTORNEY REVIEW

Resolution No. 131-10 has been reviewed and approved by the Town Attorney as to legal form and sufficiency.

Attachment

JSD/JL

cc: John Lindgren, Planning Administrator
Jane S. Day, Research Atlantica, Inc.

RESOLUTION NO. 131-10

BREAKERS HOTEL ONE SOUTH COUNTY ROAD

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described (Breakers Hotel, One South County Road) and Stating That the Subject Property Meets the Criteria Set Forth in Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."

WHEREAS, pursuant to the provisions of Chapter 54, Article V Code of Ordinances of the Town of Palm Beach the Landmarks Preservation Commission of the Town of Palm Beach held public hearings and approved Certificates of Appropriateness for renovations and improvements of the certain property described herein; and

WHEREAS, where those improvements are consistent with the United States Secretary of Interior's Standards for Rehabilitation and are made in accordance with the guidelines developed by the Department of State, they will qualify for an ad valorem tax exemption; and

WHEREAS, the property owner agrees to enter into a covenant of agreement with the Town for the ten year term for which the exemption is granted.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The property hereinafter described in Section 2 of this Resolution, being listed as a Landmark of the Town of Palm Beach, is hereby approved for the Ad Valorem Tax Exemptions for Historic Properties, pursuant to the provisions of Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach.

Section 2. The landmark is owned by The Breakers Palm Beach , Inc. and is located at One South County Road. The property is legally described as follows:

Tax Folio Number: 50-43-43-22-24-004-0000

Legal Description: That part of Tract 4, Breakers Row Plat No. 1 - Replat, according to the Plat thereof as recorded in Plat Book 46, Page 188, Public Records of Palm Beach County, Florida which lies north of the following line:
Commencing at the northwest corner of said Tract 4 thence South 0 42'09" E a distance of 643.61 feet to a corner of said Tract 4 and the beginning of the described line: thence N 89 17'56" a distance of 299.49 feet and thence N 85 32'03" E along a line of said Tract 4 and its easterly extension thereof

to the Ordinary Highwater Line of the Atlantic Ocean and the end of said described line.

Section 3. The Town Clerk is hereby ordered to furnish the owner of the property a copy of this Resolution.

Section 4. By March 1, a copy of this Resolution with completed application for Ad Valorem Tax Exemptions will be filed with the Property Appraiser's Office as defined in and subject to the provision of Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Florida.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 15th day of December, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Cheryl Somers, Acting Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 26 -10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-2 to Add Clarifying Language Relative to the Rules of Construction of the Zoning Ordinance; Sections 134-36, 134-145, 134-171, 134-327, 134-330, 134-561, 134-1576 and 134-1577 to Change the Reference from Building Official to Director of the Planning, Zoning and Building Department; Section 134-7 to Include Site Plan Review in Penalties for Violation; Sec. 134-235 to Not Allow Dimensional Waiver Approval If There Is Neighbor Objection; Section 134-326 to Provide Additional Requirements for Administrative Site Plan Review; Sections 134-416, 134-417, 134-418 and 134-419 to Provide Language That Allows Expansion of Nonconforming Multi-family and Commercial Buildings or Structures Provided it Does Not Make the Buildings or Structures More Nonconforming; Sections 134-446 by Modifying the Section Title and Clarifying That Residential Development and Redevelopment Is Required to Meet Density Requirements in the Town's Comprehensive Plan in Certain Situations; Section 134-888 by Expanding Accessory Commercial Uses Allowed for the Town Golf Course and Tennis Court Facilities; Sections 134-942, 134-997 and 134-1052 to Replace the Word "May" with "Shall" in Order to Require Site Plan Review in R-C, R-D(1) and R-D(2) Zoning Districts and Correct a Cross Reference; Sections 134-949, 134-1005, and 134-1061 to Eliminate the Reference to Cubic Content in the R-C, R-D(1) and R-D(2) Zoning Districts as That Term Does Not Apply in Those Zoning Districts; Section 134-1732 to Provide a Cross Reference to the Fee for a Temporary Storage Unit, Increase The Maximum Length of Time for Said Unit, Limit the Number of Times Allowed per Calendar Year and a Suspension Provision from this Regulation During a State of Emergency; Sections 134-2172, 134-2179 and 134-2237 to Change the Required Parking Stall Dimension And/or Drive Aisle Width to Be Consistent with Other Sections of the Code; Sections 134-2296 and 134-2329 by Eliminating the Specific Costs for Parking Permits and Providing a Reference to the Fee Schedule; Section 134-2409 to Correct Typographical Errors in the Residential Political Sign Section of the Code; Section 134-2446 to Create a Section to Include a Political Sign Provisions in the Commercial Zoning Districts; Section 134-1107 and 134-1109 to Permit Office Uses on the First Floor in the Two Hundred Block of Peruvian Avenue and Bradley Place in the C-TS Zoning District; Section 134-797, 134-847, 134-898, 134-953, 134-1009 and 134-1065 to Increase the Maximum Height of the Finished Floor from Grade and Require Building Permits to Fill and Raise the Grade of Property in the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Residential Zoning District; Section 134-1733 by Creating Said Section for Regulations for the Screening of Existing and Future Dumpsters; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Ordinance No. 26-10

ORDINANCE NO. 26 -10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 134, ZONING, AT SECTION 134-2 TO ADD CLARIFYING LANGUAGE RELATIVE TO THE RULES OF CONSTRUCTION OF THE ZONING ORDINANCE; SECTIONS 134-36, 134-145, 134-171, 134-327, 134-330, 134-561, 134-1576 AND 134-1577 TO CHANGE THE REFERENCE FROM BUILDING OFFICIAL TO DIRECTOR OF THE PLANNING, ZONING AND BUILDING DEPARTMENT; SECTION 134-7 TO INCLUDE SITE PLAN REVIEW IN PENALTIES FOR VIOLATION; SEC. 134-235 TO NOT ALLOW DIMENSIONAL WAIVER APPROVAL IF THERE IS NEIGHBOR OBJECTION; SECTION 134-326 TO PROVIDE ADDITIONAL REQUIREMENTS FOR ADMINISTRATIVE SITE PLAN REVIEW; SECTIONS 134-416, 134-417, 134-418 AND 134-419 TO PROVIDE LANGUAGE THAT ALLOWS EXPANSION OF NONCONFORMING MULTI-FAMILY AND COMMERCIAL BUILDINGS OR STRUCTURES PROVIDED IT DOES NOT MAKE THE BUILDINGS OR STRUCTURES MORE NONCONFORMING; SECTIONS 134-446 BY MODIFYING THE SECTION TITLE AND CLARIFYING THAT RESIDENTIAL DEVELOPMENT AND REDEVELOPMENT IS REQUIRED TO MEET DENSITY REQUIREMENTS IN THE TOWN'S COMPREHENSIVE PLAN IN CERTAIN SITUATIONS; SECTION 134-888 BY EXPANDING ACCESSORY COMMERCIAL USES ALLOWED FOR THE TOWN GOLF COURSE AND TENNIS COURT FACILITIES; SECTIONS 134-942, 134-997 AND 134-1052 TO REPLACE THE WORD "MAY" WITH "SHALL" IN ORDER TO REQUIRE SITE PLAN REVIEW IN R-C, R-D(1) AND R-D(2) ZONING DISTRICTS AND CORRECT A CROSS REFERENCE; SECTIONS 134-949, 134-1005, AND 134-1061 TO ELIMINATE THE REFERENCE TO CUBIC CONTENT IN THE R-C, R-D(1) AND R-D(2) ZONING DISTRICTS AS THAT TERM DOES NOT APPLY IN THOSE ZONING DISTRICTS; SECTION 134-1732 TO PROVIDE A CROSS REFERENCE TO THE FEE FOR A TEMPORARY STORAGE UNIT, INCREASE THE MAXIMUM LENGTH OF TIME FOR SAID UNIT, LIMIT THE NUMBER OF TIMES ALLOWED PER CALENDAR YEAR AND A SUSPENSION PROVISION FROM THIS REGULATION DURING A STATE OF EMERGENCY; SECTIONS 134-2172, 134-2179 AND 134-2237 TO CHANGE THE REQUIRED PARKING STALL DIMENSION AND/OR DRIVE AISLE WIDTH TO BE CONSISTENT WITH OTHER SECTIONS OF THE CODE; SECTIONS 134-2296 AND 134-2329 BY ELIMINATING THE SPECIFIC COSTS FOR PARKING PERMITS AND PROVIDING A REFERENCE TO THE FEE SCHEDULE; SECTION 134-2409 TO CORRECT TYPOGRAPHICAL ERRORS IN THE RESIDENTIAL POLITICAL SIGN SECTION OF THE CODE; SECTION 134-2446 TO CREATE A SECTION TO INCLUDE A POLITICAL SIGN PROVISIONS IN THE COMMERCIAL ZONING DISTRICTS; SECTION 134-1107 AND 134-1109 TO PERMIT OFFICE USES ON THE FIRST FLOOR IN THE TWO HUNDRED BLOCK OF PERUVIAN AVENUE

AND BRADLEY PLACE IN THE C-TS ZONING DISTRICT; SECTION 134-797, 134-847, 134-898, 134-953, 134-1009 AND 134-1065 TO INCREASE THE MAXIMUM HEIGHT OF THE FINISHED FLOOR FROM GRADE AND REQUIRE BUILDING PERMITS TO FILL AND RAISE THE GRADE OF PROPERTY IN THE R-AA, R-A, R-B, R-C, R-D(1) AND R-D(2) RESIDENTIAL ZONING DISTRICT; SECTION 134-1733 BY CREATING SAID SECTION FOR REGULATIONS FOR THE SCREENING OF EXISTING AND FUTURE DUMPSTERS; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

Section 1. Amend ARTICLE I, IN GENERAL, Section 134-2, Definitions and rules of construction, to read as follows:

Sec. 134-2. Definitions and rules of construction.

(a) *Rules of construction.* For the purpose of this chapter, the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted.

The term “used for” shall include the term “designed for”, the term “structure” shall include the term “building”, the term “lot” shall include the terms “plot” or “tract”, and the term “shall” is mandatory and not permissive.

In the interpretation or application of any provision of this chapter, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulations shall be controlling.

(b) *Definitions....*

Section 2. Amend Article II, ADMINISTRATION, Sec. 134-36. Powers of building official; council order for issuance of building permits for variance, to read as follows:

Sec. 134-36. Powers of director of planning, zoning and building:

(a) The director of planning, zoning and building is given the duty, power and authorization to enforce this chapter. He or she shall oversee the examination of all applications for permits, issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with requirements of this chapter. The building official shall record and file all applications for permits with accompanying plans and documents and shall make such reports to the planning and zoning commission and/or town council as may be required.

Section 3. Amend Article II, ADMINISTRATION , Sec. 134-145 Hearing procedure, to read as follows:

Sec. 134-145. Hearing procedure.

Any person appealing any decision of an administrative official made under this chapter shall make such appeal within 30 days after rendition of the order, requirement, decision, or determination from which such appeal is taken, or the right to appeal shall be barred. Such appeal shall be in writing to the town council with ten copies thereof filed with supporting facts and data with the director of planning, zoning and building. Appeals shall be accompanied by proper exhibits, which shall be timely filed, and shall include plans, documents and other materials to adequately depict and support the appeal. Upon receipt of the appeal, the following procedures shall be undertaken:

- (1) The director of planning, zoning and building shall forthwith examine such appeal and endorse his recommendation thereon together with all documents, plans, papers or other materials constituting the record upon which the action appealed from was taken.

...

Section 4. Amend Article II, ADMINISTRATION , Sec. 134-171, Application by property owner, costs of extraordinary professional advice, to read as follows:

Sec. 134-171, Application by property owner, costs of extraordinary professional advice.

(a)...

(b) When an application for special exception or variance is filed in which extraordinary

professional advice and/or consultation is required, as determined by the director of planning, zoning and building, such as but not limited to architectural, engineering and legal services, the expense of such professional advice shall be borne by the applicant.

Section 5. Amend Article III, SITE PLAN, Sec. 134-327, Application, to read as follows:

Sec. 134-327. Application.

(a)...

(b) Applications for site plan review shall be filed by the fee simple owner. The fee simple title owner may authorize a designee, agent or representative by power of attorney filed with the director of planning, zoning and building or designee. The application shall include those of the following items deemed to be applicable by the director of planning, zoning and building or designee:

...

Section 6. Amend Article III, SITE PLAN, Sec. 134-330, Action by town council; deviations, time limit for beginning work, to read as follows:

Sec. 134-330. Action by town council; deviations, time limit for beginning work.

(a) After review and preparation of the findings, the town council shall approve, approve with changes, or deny the application for site plan review and direct the director of planning zoning and building or designee to approve or withhold approval of the building permit.

Section 7. Amend Article V, PLANNED UNIT DEVELOPMENT PROCEDURES, Sec. 134-561, Application, to read as follows:

Sec. 134-561. Application.

An application for final approval of a planned unit development may be for all the land included in a plan or the extent set forth in the tentative approval for a section thereof. The application shall be made to the director of planning, zoning and building or designee. The application shall include such drawings, specifications, covenants, easements, conditions and for of performance bond as were set forth by written resolution of the town council at the time tentative approval. A public hearing on an application for final approval of the plan or part thereof shall not be required, provided the plan, or the part thereof submitted for final approval, is in substantial compliance with the plan theretofore given tentative approval. The town council shall find that any changes to the tentative plan shall not be in contravention to the public's best interests.

Section 8. Amend Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1576, Corner lots, to read as follows:

Sec. 134-1576. Corner lots.

(a) Where any lot is located on any street intersection or where two or more intersecting street lines outline any lot, or where any lot is located upon any corner, or side of the lot facing a street shall be determined to be the front street line of the lot by the orientation of the building facing a street and the other side of the lot facing a street shall be determined to be the side street of the lot, provided that such choice, in the opinion of the director of planning, zoning and building shall not be injurious to the existing or desirable future development of the surrounding property. Except in the R-B district, the required street side yard shall have the same setback as the front street yard of such lot, and shall have the same provisions, requirements and restrictions as a required front street yard. (See following illustrations.)

...

(b)...

Section 9. Amend Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1577, Through lots, to read as follows:

Sec. 134-1577. Through lots.

(a) Where any lot extends the entire depth or width of a block and has frontage on more than one street at opposite ends of the lot, one side of the lot facing a street shall be determined to be the front street line of the lot by the orientation of the building facing a street and the other side of the lot facing a street shall be determined to be the rear street frontage, providing that such choice, in the opinion of the director of planning, zoning and building, shall not be injurious to the existing or desirable future development of surrounding property. The required rear street yard shall have the same setback as the front of such lot and shall have the same provisions, requirement and restrictions as a required front yard.

(b)...

Section 10. Amend Article I, IN GENERAL, Sec. 134-7, Violations and penalties, to read as follows:

Sec. 134-7. Violations and penalties.

(a) Violations of this chapter or failure to comply with any of the requirements of this chapter, including violations of conditions and safeguards established in connection with grants of variances, special exceptions or site plan reviews, shall constitute a zoning violation, and the violator shall be prosecuted under the provisions of article V of chapter 2 by the town code enforcement board. Each day such violation continues shall be considered a separate offense.

(b)...
...

Section 11. Amend Article II, ADMINISTRATION*, Sec. 134-235, General conditions applicable to all dimensional waivers, to read as follows:

Sec. 134-235. General conditions applicable to all dimensional waivers.

- (a) Approval of the waiver will not compromise traffic safety.
- (b) Approval of the waiver will not compromise fire safety.
- © There shall be no objection of any abutting property owner(s).

Section 12. Amend Article III, SITE PLAN, Sec. 134-326. Purpose of review process; building permit denial pending approval; costs of extraordinary professional advice, to read as follows:

Sec. 134-326. Purpose of review process; building permit denial pending approval; costs of extraordinary professional advice.

(a) The primary purpose of the site plan review process is to examine for potential adverse impact on the adjacent area, neighborhood or town those uses having characteristics identified as possessing the potential for negative impact and to ensure such uses are located, sited and designed that they result in a positive contribution to the area, neighborhood and town. To achieve these purposes, the town council or director of planning, zoning and building, whichever is relevant, may, after detailed review of the site plan and its potential off-site impact, impose such operational and/or design conditions as will eliminate or minimize such impact. Such conditions shall reflect the review criteria set forth in this article.

(b) Where, by the terms of this chapter site plan review is required, no building permit shall be issued for the purposes of erecting, altering or converting any structure or building or any part thereof or altering the use of any land until after the town council or director of planning, zoning and building or designee approves the site plan in accordance with this article.

Notwithstanding the provisions of the immediately preceding sentence, site plan reviews which have obtained prior Architectural Commission or Landmark Preservation Commission approval, which do not involve a variance or special exception, an increase in the square footage by more than 200 square feet, and/or an increase in density or intensity of use, may be administratively approved or denied by the director of planning, zoning and building department or designee.

In order to administratively approve a site plan review, a determination must be made that the proposed site plan review meets concurrency; does not create negative impacts on an

abutting property owner or right-of-way; and, if required to go to either the Architectural Commission or Landmark Preservation Commission, does not receive an objection from a noticed property owner as part of the Commission review process, Said approval shall not require property owner notice or legal advertisement as provided for site plan review by town council. The administrative site plan review application must be acted upon within 30 days of being deemed complete by the planning, zoning and building department. For the purpose of this subsection, the term intensity of use refers to creating a larger parking demand based on the use and/or square footage.

© When an application for site plan review is filed in which extraordinary professional advice and/or consultation is required, as determined by the director of the planning, zoning and building department, such as but not limited to architectural, engineering and legal services, the expense shall be borne by the applicant.

Section 13. Amend Article IV, NONCONFORMITIES, Sec. 134-416. Continuation; definition; intent, to read as follows:

Sec. 134-416. Continuation; definition; intent.

...

(d) It is further the intent of this chapter that nonconforming buildings and structures are allowed to be enlarged , expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not used as grounds for adding other buildings or structures prohibited elsewhere, in the same district.

Section 14. Amend Article IV, NONCONFORMITIES, Sec. 134-417, Extension or expansion, to read as follows:

Sec. 134-417. Extension or expansion.

A building or structure which is nonconforming with any of the lot, yard and bulk regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. This section shall not apply to a building or structure which is demolished by more than 50 percent, as determined by cubic footage, in preparation for any proposed enlargement, expansion, or extension of a building or structure.

Section 15. Amend Article IV, NONCONFORMITIES, Sec. 134-418, Conversion to conforming building or structure, to read as follows:

Sec. 134-418. Conversion to conforming building or structure.

For any building or structure or part thereof, in which a nonconformity of the building or structure or part thereof is altered, changed or replaced by a conforming building or structure, the terminated nonconformity shall not thereafter be resumed nor shall any additional nonconformity be permitted.

Section 16. Amend Article IV, NONCONFORMITIES, Sec. 134-419, Enlargement, extension, reconstruction or alteration., to read as follows:

Sec. 134-419, Enlargement, extension, reconstruction or alteration.

No nonconforming building or structure shall be enlarged, extended, reconstructed or structurally altered except as provided for in Sec. 134-416, 134-417 and 134-418, or when required to do so by law as follows:....

Section 17. Amend Article IV, NONCONFORMITIES, Sec. 134-446, Application for special exception or variance, to read as follows:

Sec. 134-446. Development and redevelopment of nonconforming residential lots.

(a) Vacant land located in any zoning district which does not conform to the minimum requirements of lot dimension or lot area as required by the schedule of lot, yard and bulk regulations for the district as given in article VI of this chapter may be developed or redeveloped as allowed in (b) and © provided that multi-family residential use and single-family residential use does not exceed the maximum density allowed for the site, as identified in the Future Land Use Element in the Town's Comprehensive Plan. Development of a single-family residential dwelling unit on a vacant residentially zoned lot which has existed in the same configuration for a minimum of thirty years is allowed subject to (b) or ©, whichever is relevant.

(b) The development or redevelopment of land which does not conform to the requirements of lot dimension or lot area requirements in the R-C, R-D(1), R-D(2), C-TS, C-WA, C-OPI, C-PC, C-B and PUD zoning districts shall be subject to an application to the town council for a variance.

© The development or redevelopment of land which does not conform to the requirements of lot dimension or lot area requirements in the R-AA, R-A and R-B zoning districts shall be subject to an application to the town council for special exception and/or site plan review as provided for in Sections 134-793(b), 134-843(b) and 134-893(b).

Section 18. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-888, Accessory

uses., to read as follows:

Sec. 134-888. Accessory uses.

The accessory uses in the R-B low density residential district are as follows:

(1)...

...

- (5) Other accessory uses, customarily incident to permitted or special exception uses, not involving the conduct of business except such uses as may be associated with the town's operation of its municipal dock, golf course and tennis court facilities.

Section 19. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-942, Permitted uses, to read as follows:

Sec. 134-942. Permitted uses.

The permitted uses in the R-C medium density residential district are as follows:

...

- (5) Multifamily dwellings (Site plan review shall be required. See Article III of this chapter.)

Section 20. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-997, Permitted uses, to read as follows:

Sec. 134-997. Permitted uses.

The permitted uses in the R-D(1) moderate density residential district are as follows:

...

- (5) Multifamily dwellings (Site plan review shall be required. See Article III of this chapter.)

Section 21. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1052, Permitted uses, to read as follows:

Sec. 134-1052. Permitted uses.

The permitted uses in the R-D(2) high density residential district are as follows:

...

- (5) Multifamily dwellings (Site plan review shall be required. See Article III of this chapter.)

Section 22. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-949, Same-

Existing single-family dwelling development, to read as follows:

Sec. 134-949. Same-Existing single-family dwelling development.

(a) A single-family dwelling located in the R-C medium density residential district, which dwelling is nonconforming with any of the schedule of lot, yard and bulk regulations for this district; may be enlarged with a first story and/or second story addition, provided: the addition complies with the current schedule of lot, yard and bulk regulations for this district;

(b) This section shall not apply to a dwelling that is demolished by more than 50 percent, as determined by cubic footage, in preparation for any proposed addition, exterior renovation, or exterior reconstruction.

© It is the intent of this section to allow a partial exemption to sections 134-416 and 134-417.

Section 23. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1005, Same-Existing single-family dwelling development, to read as follows:

Sec. 134-1005. Same-Existing single-family dwelling development.

(a) A single-family dwelling located in the R-D(1) moderate density residential district, which dwelling is nonconforming with any of the schedule of lot, yard and bulk regulations for this district; may be enlarged with a first story and/or second story addition, provided the addition complies with the current schedule of lot, yard and bulk regulations for this district;

(b) This section shall not apply to a dwelling that is demolished by more than 50 percent, as determined by cubic footage, in preparation for any proposed addition, exterior renovation, or exterior reconstruction.

© It is the intent of this section to allow a partial exemption to sections 134-416 and 134-417.

Section 24. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1061, Same-Existing single-family dwelling development, to read as follows:

Sec. 134-1061. Same-Existing single-family dwelling development.

(a) A single-family dwelling located in the R-D(2) high density residential district, which dwelling is nonconforming with any of the schedule of lot, yard and bulk regulations for this district; may be enlarged with a first story and/or second story addition, provided the addition complies with the current schedule of lot, yard and bulk regulations for this district;

(b) This section shall not apply to a dwelling that is demolished by more than 50

percent, as determined by cubic footage, in preparation for any proposed addition, exterior renovation, or exterior reconstruction.

© It is the intent of this section to allow a partial exemption to sections 134-416 and 134-417.

Section 25. Amend Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec.134-1732, Temporary storage units, to read as follows:

Sec. 134-1732. Temporary storage units.

A temporary roll-off storage unit, such as a portable on demand storage unit, temporary storage unit is permitted on a property for a maximum period of , five business days, three time per calendar year, provided the property owner obtains a permit from the town prior to said roll-off or portable on demand storage unit being placed on the property. The permit fee shall be established by resolution of the town council and may be amended from time to time by resolution of the Town Council. The time limit and permit provisions for temporary roll-off storage unit or vehicle used for storage shall be suspended for such time that a State of Emergency is declared by the State or town council.

Section 26. Amend Article IX, OFF-STREET PARKING AND LOADING*, Sec. 134-2172, Size of spaces and access, to read as follows:

Sec. 134-2172. Size of spaces and access.

An off-street automobile parking space shall consist of a parking space having minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be 10 feet for one-way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into a 60 degree parking space; and 15 feet into a 45 degree parking space. Minimum width of an aisle designed and intended for the maneuvering of an automobile into a parking space shall be in conformance with the illustration set forth in section 134-2171. The parking plan must be so arranged that each automobile may be placed and removed from the parking space assigned thereto and taken to and from the property without the necessity of moving any other automobile to complete the maneuver.

Section 27. Amend Article IX, OFF-STREET PARKING AND LOADING*, Sec. 134-2179, Alternate guidelines for operation as principal use of land, to read as follows:

Sec. 134-2179. Utilization of yards.

...

(f) Other permitted and special exception uses. In all districts for all other permitted or approved special exception uses, required front, street side, and street rear yards may not be use for off-street parking, but all other yards may be used for such purposes. In addition, no required or supplemental off-street parking shall be located closer than 15 feet from a front, street side, or street rear property line. Required or supplemental off-street parking shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall extend across the entire building line which separates the parking areas from the street except for the access way. Such screening shall also be required along the interior lot lines and shall not be less than four feet in height and shall not encroach upon the rear easement line. The height of said required screening shall be measured as set forth in section 134-1666 et seq. Each parking space shall have an adequate and substantial wheel stop or curb, not less than six inches in height, located at least four feet from the abutting side or rear property line and not less than two feet from required landscaping. Such two-foot setback may be part of the nine-foot by 18 foot parking space. Further, all required interior landscaping not already protected by wheel stops shall be protected by a curb, a minimum of six inches in height, around the perimeter of such landscaped area to prevent damage by vehicles maneuvering within the parking area. Such curbing must be so designed as not to prevent the drainage of water from the paved area into the landscaped area. In addition to the screening requirements in this subsection, the interior of the parking area must have suitable landscaping, including the provision of shade trees, such landscaped area to be not less than ten percent of the parking and drive aisle area. The total devoted to landscaping, comprising both the screening and the interior landscaping, must be at least 15 percent of the parking and drive aisle area. A site plan showing the landscaping and the irrigation facilities for the landscaping must be submitted.

Section 28. Amend Article IX, OFF-STREET PARKING AND LOADING*, Sec. 134-2237, Alternate guidelines for operation as principal use of land, to read as follows:

Sec. 134-2237. Alternate guidelines for operation as principal use of land.

For a public or private parking lot which is to be operated as the principal and sole use on the parcel of land, the following may be utilized as alternate guidelines in reviewing the site plan:

- (1) *Size and access.* An off-street parking space shall have minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be ten feet for one way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into 60 degree parking space; and 15 feet into a 45 degree parking space (See

illustration in Sec. 134-2171). Individual ingress and egress drives extending across the public sidewalks and curbs and connecting the parking lot to the public street areas shall not exceed a maximum of 30 feet. The design, number and placement of such drives are to be subject to the approval of the director of public works before being installed.

Section 29. Amend Article XI, SIGNS, Sec. 134-2296, Issuance of special parking permits upon application, to read as follows:

Sec. 134-2296, Issuance of special parking permits upon application.

...

(b) The application for a permit shall contain the name of such owner or operator of the motor vehicle; residential address; and the motor vehicle's make, model and registration number. The motor vehicles's registration may, at the discretion of the finance department, be required to be presented at the time of making the application in order to verify the contents thereof. If the vehicle is registered at an address other than the local residence, the applicant shall provide other sufficient proof, acceptable to the finance department, showing residency within the controlled residential parking area. The permit shall be valid for a fiscal year, as defined in section 134-2292, and shall be renewed for each successive fiscal year. A fee , as determined by resolution of the town council shall be charged for the annual permit and shall be payable at the finance department. After the initial permit has been issued, any renewal shall be affixed to the vehicle no later than October 15 of the applicable current year.

© Visitor/service permits. Upon application by such owner, up to two visitor/service permits may be issued, which permits may be used by such owner for the sole purpose of providing parking on a temporary basis to service vehicles which are conducting work at such owner's premises or for visitors of such owner's residence. The permits shall be used only for the period of time during which business is to be conducted by the service vehicles or for the duration of stay of a visitor to the residence for which the permit is issued.

The application for a visitor/service permit or permits shall be filed by such owner. The permit or permits shall be valid for a fiscal year as defined is section 134-2292 and may be renewed each successive fiscal year. A fee , as determined by resolution of the town council shall be charged for each visitor/service permit and shall be payable at the finance department. These permits shall not be affixed to the vehicle, but shall be placed in a clearly visible place on the inside of the visitor's or service vehicle observable through the front windshield of the vehicle. The permits shall be valid only for the period of time during which the service vehicle is conducting work at the premises or for the period of time a visitor is at the premises.

Section 30. Amend Article IX, OFF-STREET PARKING AND LOADING*, Sec. 134-2329, Fees, to read as follows:

Sec. 134-2329. Fees.

(a) *Annual parking permit fees.* An annual fee is hereby authorized for issuance of said permit, payable at the town finance department, for each annual permit issued under this division. The amount of the annual fee shall be established by resolution of the town council and may be amended from time to time by resolution of the Town Council.

(b) *Visitor/service permits.* An annual fee is hereby authorized for issuance of said permit, payable to the finance department each visitor/service permit. The amount of the annual fee shall be established by resolution of the town council and may be amended from time to time by resolution of the town council.

Section 31. Amend Article XI, SIGNS, Sec. 134-2409, Temporary political signs pertaining to specific election, to read as follows:

Sec. 134-2409. Temporary political signs pertaining to specific election.

Political signs urging the election or opposition of any candidate seeking any political office or urging the passage or defeat of any ballot measure are permitted subject to the following restrictions:

- (1) *Maximum size:* No sign shall exceed a maximum of four square feet in area.
- (2) *Maximum number:* Not more than one sign shall be placed upon any property unless such property fronts upon more than one street, in which event two signs may be erected, one on each frontage. Nothing in this section shall be construed as prohibiting the same wording from being on both the front and back of the sign.
- (3) *Location:* Only on lots where the property owner has given permission. The placing of temporary political signs anywhere on public property is prohibited. Temporary political signs located on public property shall be deemed to be public property and shall be summarily removed by the town.
- (4) *Minimum setbacks:* From lot line of another: Ten feet. From the front property line or from a street: Five feet.
- (5) *Maximum height:* Four feet, including supports for the sign.
- (6) *Time limit:* Signs permitted pursuant to this section shall not be placed prior to 30 days of the election to which they are related and shall be removed within 48 hours after the day of the election to which they apply.
- (7) *Illegally placed.* Temporary political signs shall be removed by or at the expense of the owner or individual responsible for the illegal placement.

Section 32. Amend Article XI, SIGNS, Sec. 134-2446, Temporary political signs pertaining to specific election, to create the section to read as follows:

Sec. 134-2446. Temporary political signs pertaining to specific election.

Political signs urging the election or opposition of any candidate seeking any political office or urging the passage or defeat of any ballot measure are permitted subject to the following restrictions:

- (1) *Maximum size:* No sign shall exceed a maximum of four square feet in area.
- (2) *Maximum number:* Not more than one sign shall be placed upon any property unless such property fronts upon more than one street, in which event two signs may be erected, one on each frontage. Nothing in this section shall be construed as prohibiting the same wording from being on both the front and back of the sign.
- (3) *Location:* Only on lots where the property owner has given permission. The placing of temporary political signs anywhere on public property is prohibited. Temporary political signs located on public property shall be deemed to be public property and shall be summarily removed by the town.
- (4) *Minimum setbacks:* From lot line of another: Ten feet. From the front property line or from a street: Five feet.
- (5) *Maximum height:* Four feet, including supports for the sign.
- (6) *Time limit:* Signs permitted pursuant to this section shall not be placed prior to 30 days of the election to which they are related and shall be removed within 48 hours after the day of the election to which they apply.
- (7) *Illegally placed.* Temporary political signs shall be removed by or at the expense of the owner or individual responsible for the illegal placement.

Section 33. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1107, Permitted Uses, to read as follows:

Sec. 134-1107. Permitted uses.

(a) Enumerated; maximum gross leasable area. The permitted uses in the C-TS town-serving commercial district, with a maximum 2,000 square feet of gross leasable area (GLA), are as follows:

- (1) Retail and service establishments, such as restaurants, excluding formula restaurants as defined in section 134-2 and bars/lounges, hardware stores, food stores, clothing stores, drugstores, barbershops beauty salons and jewelry stores.
- (2) Offices, executive office suites, professional services, business services and securities and financial brokerage and trust companies located above the first floor.
- (3) Offices, professional services, business services and securities and financial brokerage and trust companies in the 200 block of Peruvian Avenue and Bradley Place.
- (4) Nonprofit cultural centers.
- (5) Professional and studio type schools.
- (6) Essential services.

Section 34. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1109, Special exception uses, to read as follows:

Sec. 134-1109, Special exception uses.

(a) The special exception uses require a site plan and review as provided in article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:

(1)...

...

- (18) Except as provided for in Sec. 134-1107(3), offices (excluding executive office suites), professional services, business services and securities or financial brokerage and trust companies on the first floor provided that there are at least 50 percent existing office uses on all floors of the building in which the office use is proposed and more than 50 percent existing office uses on the first floor within 300 feet of the proposed office use within the same zoning district.

Section 35. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-797, Lot grade, topography and drainage to read as follows:

Sec. 134-797. Lot grade, topography and drainage.

In the R-AA, large estate residential district, the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 36. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-847, Lot grade, topography and drainage to read as follows:

Sec. 134-847. Lot grade, topography and drainage.

In the R-A, estate residential district, the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage

requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 37. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-898, Lot grade, topography and drainage to read as follows:

Sec. 134-898. Lot grade topography and drainage.

In the R-B, low density residential district, the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 38. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-953, Lot grade, topography and drainage to read as follows:

Sec. 134-953. Lot grade, topography and drainage.

In the R-C, medium density residential district, the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 39. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1009, Lot grade, topography and drainage to read as follows:

Sec. 134-1009. Lot grade topography and drainage.

In the R-D(1), moderate density residential district, the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 40. Amend Article VI, DISTRICT REGULATIONS, Sec. 134-1065, Lot grade, topography and drainage to read as follows:

Sec. 134-1065. Lot grade topography and drainage.

In the R-D(2), high density residential district, , the natural grade and topography of a lot may be altered to raise and grade the lot to meet base flood elevation requirements as part of a building permit for a building or structure which meets the paving and drainage requirements of the Town. The grade may not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town. As part of that approved paving and drainage plan, the grade shall not be raised more than 18 inches above the crown of the abutting street unless the approved plan meets the town's containment and percolation requirements for rainwater on the lot. The top of the finished floor (habitable) shall not exceed eight inches above the permitted grade.

Section 41. Amend Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS to create Sec. 134-1733, Dumpsters, to read as follows

Sec. 134-1733. Commercial, institutional and multi-family dumpsters and recycle containers.

(a) *Applicability.* The requirements pertaining to the location and screening of dumpsters established in this section shall apply to all zoning districts within the Town having or using dumpsters for sanitation service or recycling service. Temporary dumpsters, such as those which are placed on job sites during construction activity, are not subject to this section.

(b) *Minimum requirements.* The location and use of dumpsters and recycle containers shall comply with the standards established below.

(1) *Location.* All dumpsters recycle containers shall be located so as to be reasonably accessible for trash collection by the sanitation vehicles. Dumpsters and recycle containers shall not be located within a required front street side or

street rear yard setback or right-of-way of a public street or alley.

(2) Screening.

- a. All dumpsters and recycle containers shall be screened from public view, from public rights-of-way and from abutting properties.
- b. Dumpsters and recycle containers shall be screened on all four sides, Gates shall be closed when the dumpster or recycle containers are not being filled or dumped, and shall be maintained in good repair.
- c. Dumpsters and recycle containers shall be screened with a minimum six foot high masonry wall and six foot high solid gates of the same architectural style, color, and materials as the principal use. Dumpster and recycle container screening enclosures shall be maintained in good repair. Landscaping is required to screen dumpster enclosures as much as feasibly possible from a public right-of-way.
- d. All dumpsters and recycle containers must be placed on a hard surface, of adequate size to accommodate the dumpster and garbage trucks.
- e. Commercial Dumpsters and recycle containers shall be located a minimum of 15 feet from a residential zoning district or residential use.

Section 42. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 43. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 44. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 45. Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 9th day of November, 2010, and second and final reading on this 15th day of December, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Cheryl A. Somers, Acting Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Time Extensions

Agenda Title

Waiver of Section 42-199, Hours of Construction Work, at 221 Worth Avenue (Per Email Dated November 24, 2010, From James Paine).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated December 1, 2010, from John Page
- E-mail dated November 24, 2010, from Jim Paine
- Letter dated November 18, 2010, from Sherry Frankel
- Letter dated November 30, 2010, from James C. Paine, Jr.
- Site Plan 221 Worth Ave
- Letter dated November 30, 2010 from James C. Paine, Jr.

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours – 221 Worth Avenue

Date: December 1, 2010

STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work for 221 Worth Avenue, within the C-WA Zoning District with the following conditions:

- No parking or material staging is to take place on Worth Avenue.
- All loading or unloading must take place between the hours of 8:00AM and 10:00 AM.
- All concrete cutting and chipping must take place between the hours of 8:00AM and 10:00 AM.
- A building permit shall be obtained before starting any work.
- A plywood wall, painted forest green, shall be constructed and maintained in front of the building until the storefront replacement is complete.
- Work shall not commence until January 3, 2011.
- All work exterior work shall be completed by January 24, 2011.
- Interior work shall be completed by January 31, 2011.
- Any verified complaints from neighbors will revoke this extension of hours.
- Subject to an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200 foot radius of the subject property have been notified of this request prior to 10 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

GENERAL INFORMATION

The Town received an email on November 24, 2010 from James Paine, Jr. requesting an extension of the allowable hours for construction work in the C-WA zoning district to replace a storefront and perform minor interior work. This address, formerly a separate space, was converted to become part of the Taboo Restaurant. The storefront was removed, including the door, and windows were installed to match Taboo. This space currently has no exterior door. The

Taboo expansion never materialized. It is now intended to use the address as a separate business. The space is currently leased, but an exterior door is required before occupancy can occur. Some minor interior work will be performed which includes floor covering and reestablishing the integrity of the fire rating of the wall separating these two spaces.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

Attachments

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Robert Walton, Code Enforcement Unit
James C. Paine, Jr.

Construction hours waiver at 221 Worth Ave. for storefront change

JAMES PAINE

to:

jtaylor

11/24/2010 09:48 AM

Show Details

History: This message has been forwarded.

Dear Jeff, as per our conversation this morning, please accept this request that the above referenced request be placed on the agenda for the December Town Council meeting. This is a request to replace the storefront at the bay directly east of Taboo, formerly approved as an expansion of taboo. ARCOM approved the appearance of the proposed storefront change at the November meeting, but noted that a waiver will be necessary for the work to take place during the season. I will bring the related paperwork for submittal next week. I will also forward a copy of the Worth Avenue Association letter after I send this email. Thanks, Jim Paine



Worth Avenue Association

PO Box 2126, Palm Beach, FL 33480
Phone (561) 659-6909 * Fax (561) 681-1316
WWW.WORTH-AVENUE.COM

Quality - Integrity - Service
Fax: 655-7191

November 18, 2010

Town of Palm Beach
Attn: Town Council
360 South County Road
Palm Beach, FL 33480

RE: 221 Worth Avenue

Dear Town Council:

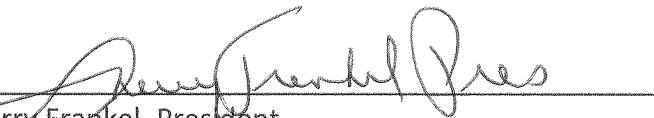
On behalf of the Worth Avenue Association, Inc. Board of Directors, this letter will serve to notify the Town of Palm Beach that the Worth Avenue Association does not object to the construction modifications/improvements being proposed for 221 Worth Avenue. We have been advised by the architect for the project that construction will take approximately two weeks from the date of issuance of the permit and that the project includes removal and replacement of the current windows with storefront plate glass and entrance door.

It should be agreed however, that construction personnel parking and construction vendor parking will be strictly prohibited on Worth Avenue at any time during the construction process.

Should you require any additional information, please contact our President, Sherry Frankel at 655-1996.

Yours truly,

THE WORTH AVENUE ASSOCIATION, INC.

By: 
Sherry Frankel, President

JAMES C. PAINE, JR.
Attorney at Law
Architect

2831 Exchange Court, Suite "A"
West Palm Beach, Florida 33409

Telephone (561) 346-4685
Facsimile (561) 686-5862

November 30, 2010

Jeff Taylor, Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Waiver of Section 42-199 for 221 Worth Avenue, Palm Beach, Florida

Dear Mr. Taylor:

I represent Burton Handelsman and Love LLC in connection with proposed improvements to the tenant space at 221 Worth Avenue and on their behalf would like to appear before the December 15, 2010 Town Council meeting to request a waiver from Section 42-199 of the Town of Palm Beach Code to extend construction work on Worth Avenue from January 3, 2011 until January 31, 2011. The work during the season will not include weekends or holidays and all workers and deliveries will access the site via Peruvian Avenue except for the one day that the storefront glass is delivered and installed. The waiver is necessary because the decision to improve the space was dependant upon circumstances not known until recently and now time is of the essence.

Please contact me if you have any questions concerning this request.

Thank you very much.

Sincerely,

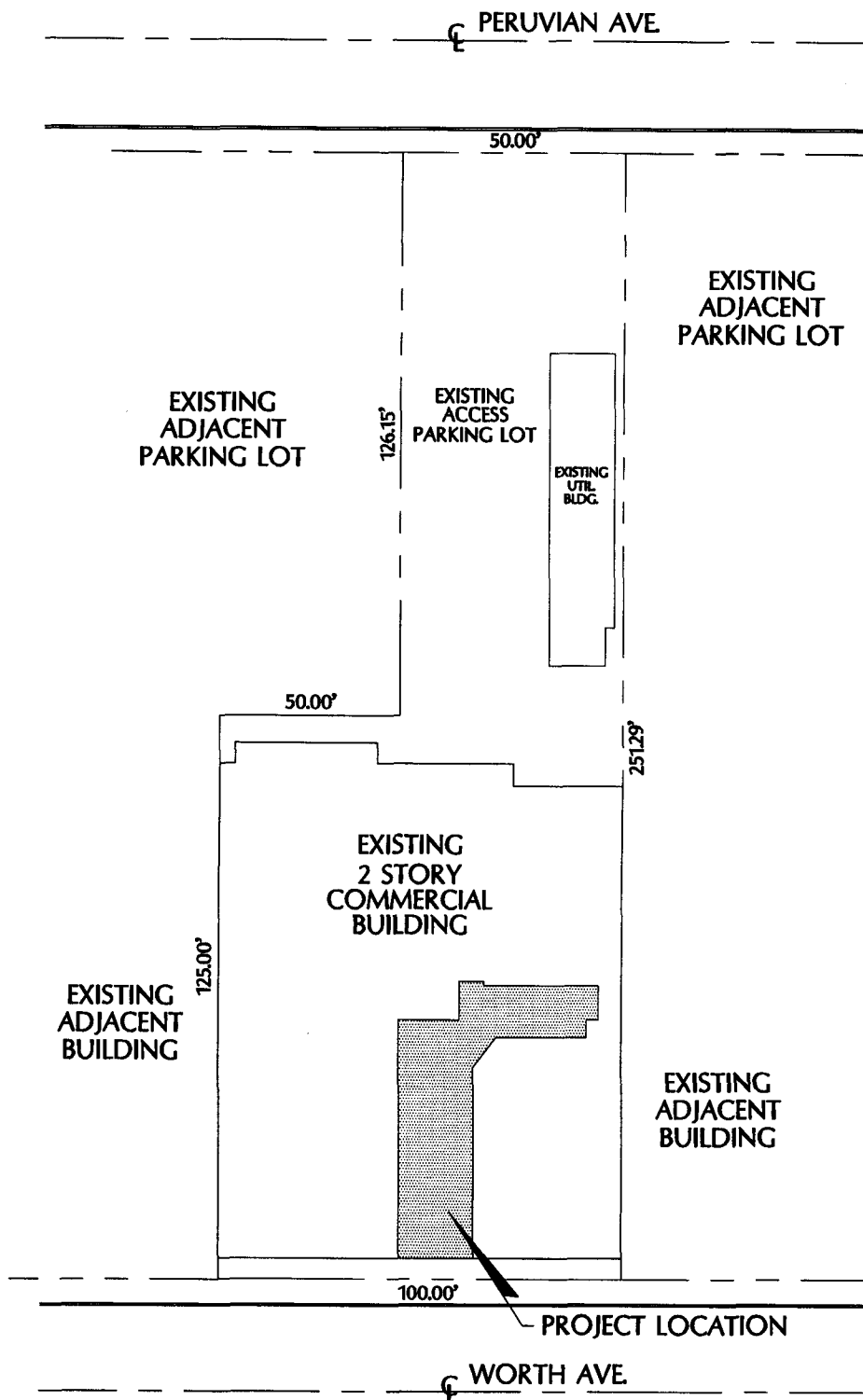
A handwritten signature in black ink, appearing to read 'James C. Paine, Jr.', with a long horizontal flourish extending to the right.

James C. Paine, Jr.

**PROPOSED CONSTRUCTION SCHEDULE FOR IMPROVEMENTS AT
221 WORTH AVENUE**

December 15, 2010- order storefront glass.

**January 3, 2011 through January 31, 2011- receive and install s
storefront glass and finish all interior work.**



SITE PLAN

SCALE: 1"=40'-0"

SK-1

JAMES C. PAINE, JR.
FLORIDA R.A. #0009524
2831-A EXCHANGE COURT
WEST PALM BEACH, FLORIDA 33409

EXISTING TENANT SPACE

221 WORTH AVENUE
PALM BEACH, FLORIDA

JAMES C. PAINE, JR.

**Attorney at Law
Architect**

**2831 Exchange Court, Suite "A"
West Palm Beach, Florida 33409**

Telephone (561) 346-4685
Facsimile (561) 686-5862

November 30, 2010

To Whom It May Concern:

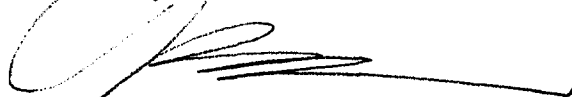
A waiver of Town Ordinance 42-199, Hours of construction, is being requested by the owner of 221 Worth Avenue to replace the existing store front with a new storefront and make minor interior improvements. The waiver is requested from December 15, 2010 until January 31, 2011.

This matter will be presented to the Palm Beach Town Council at the regularly scheduled meeting on December 14, 2010. Any concerns about this matter should be expressed at this meeting.

This notice is required to be postmarked no later than 10 days before the regularly scheduled meeting.

Please contact me if you have any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Paine, Jr.', with a stylized flourish at the end.

James C. Paine, Jr.

RECEIVED

DEC - 2 2010

TOWN OF PALM BEACH
PZB DEPT

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Time Extensions

Agenda Title

Waiver of Section 42-199, Hours of Construction Work, at 265 Sunset Avenue (Publix Supermarket) (Per Letter Dated November 23, 2010, From Maura Ziska).

a. Presentation from Publix (Including Alternate Store Possibility).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated December 1, 2010, from John Page
- Letter dated November 23, 2010, from Maura A. Ziska

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours – 265 Sunset Avenue, Publix Supermarket

Date: December 1, 2010

STAFF RECOMMENDATION

Publix is proposing to 1) relocate utilities, 2) dewater the areas required by the installation of utility junction boxes, and 3) begin this work on January 3, 2011, prior to their previously approved construction start in February. Relocation of the utilities for the new Publix is a necessary first step to constructing the new store. The utilities, electric, telephone, cable, etc. must be placed below all site specific underground piping such as site drainage, electrical conduits and plumbing and sewer lines. The proposed work will be performed using directional boring instead of open trenching which will keep traffic and surface disruption to a minimum. All utility work is to be scheduled during normal working hours. Dewatering, however, is a process that must occur “around the clock,” thus prompting this request to extend work hours. The requested waiver is for the running of de-watering pumps to allow for the installation of subsurface precast junction boxes.

Should the Council allow this accelerated start date, staff recommends the following conditions be added to the Construction Management Agreement:

- Dewatering pumps shall be operated to the minimum time required for successful completion of the work.
- The dewatering pumps shall comply with the Town’s codes with respect to noise and discharge of water.
- All town approved easements must be dedicated prior to work beginning on the dewatering and directional boring.

GENERAL INFORMATION

Staff received a letter from Maura Ziska with Kochman & Ziska, PLC, on November 24, 2010, requesting an extension of the permissible working hours to allow for the use of dewatering pumps to facilitate the relocation of the utility lines for the Publix construction project. The current utility location for the Publix store and adjacent bank is on the west end of the parking lot beside Bradley Place. The relocation plan for the new Publix calls for directional boring from the existing location, south along Bradley and then east along Sunset to the east side of the Publix property. The boring will then go north to the new transformer site. Boring to the Wachovia

Bank will extend north along Bradley and then east through the Publix parking lot to a location south of, and behind, the Wachovia bank.

At the September 15, 2010 Council meeting it was agreed that work on this project would commence in February. The Town Council approved a waiver from construction hours to allow the Publix project to proceed from 7:30 AM until 8:30 PM from April 25 through June 1, 2011. Notice was sent to neighboring properties at that time announcing the request for extended hours. The newly requested utility and dewatering work proposed to begin on January 3 was not previously disclosed. Staff has required the applicant to re-notice abutting owners regarding the newly proposed utility/dewatering request to be heard at Town Council on December 15. This work, if permitted, will proceed beyond the earlier approved February start date of the project and will become incidental at that time.

Work entails excavating holes into which a precast concrete junction box or “manhole” will be set, and boring underground from one junction box to another. Junctions are usually located where the utilities change direction and where future utilities may be tapped in the future. All work between the junction boxes is done by underground drilling causing no disruption to the surface roads or parking areas. Only the excavated holes will require dewatering until all lines to each manhole are installed and sealed. Publix does not believe this work will interfere with operation of the business itself, which is scheduled to remain open through Easter.

Any new work approved by Town Council, together with any conditions which may be imposed, will be captured and included in the Construction Management Agreement. Staff has advised Publix to be present at the December 15 Council meeting and to be prepared to explain at length, if necessary, the importance of this work, the nature of any interruptions and its timing.

Attachment

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Robert Walton, Code Enforcement Unit
Maura Ziska, Kochman & Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska
*Also admitted in New York

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960
Facsimile: (561) 802-8995

VIA EMAIL AND HAND-DELIVERY

November 23, 2010

Jeff Taylor
Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Publix Property, 265 Sunset Avenue, Palm Beach, FL

Dear Mr. Taylor:

In reference to the above construction project and in order to construct the new grocery store that was approved by the Town Council, it is necessary to relocate the current utilities. My client would like to assist the local utilities in their re-location of the current utilities to the proposed locations. Publix is requesting that this limited scope of work be allowed to commence on January 3, 2011. The utility relocation work will be during normal construction hours however, the de-watering aspect of the work will need to have pumps running 24 hours a day for the duration of this work. The work entails installing the proposed utilities around the perimeter of the site by method of directional bore. The use of the pumps will conform with the Town's code with respect to noise and discharge of water. The directional boring method will minimize the impact to the existing driveways, sidewalks and parking spaces in Publix, which will remain open and usable during this work. A copy of the utility relocation plan is attached.

Please place this matter on the agenda to be heard at the December 15, 2010 Town Council Meeting. Please call me if you have any questions with the foregoing or require any additional information.

Sincerely yours,



Maura A. Ziska

/maz

Attachment

cc: Woody Rayburn
Hank Porcher
Guy Reese



SECTION A-A
SCALE: 1/2" = 1'-0"

SECTION B-B
SCALE: 1/2" = 1'-0"

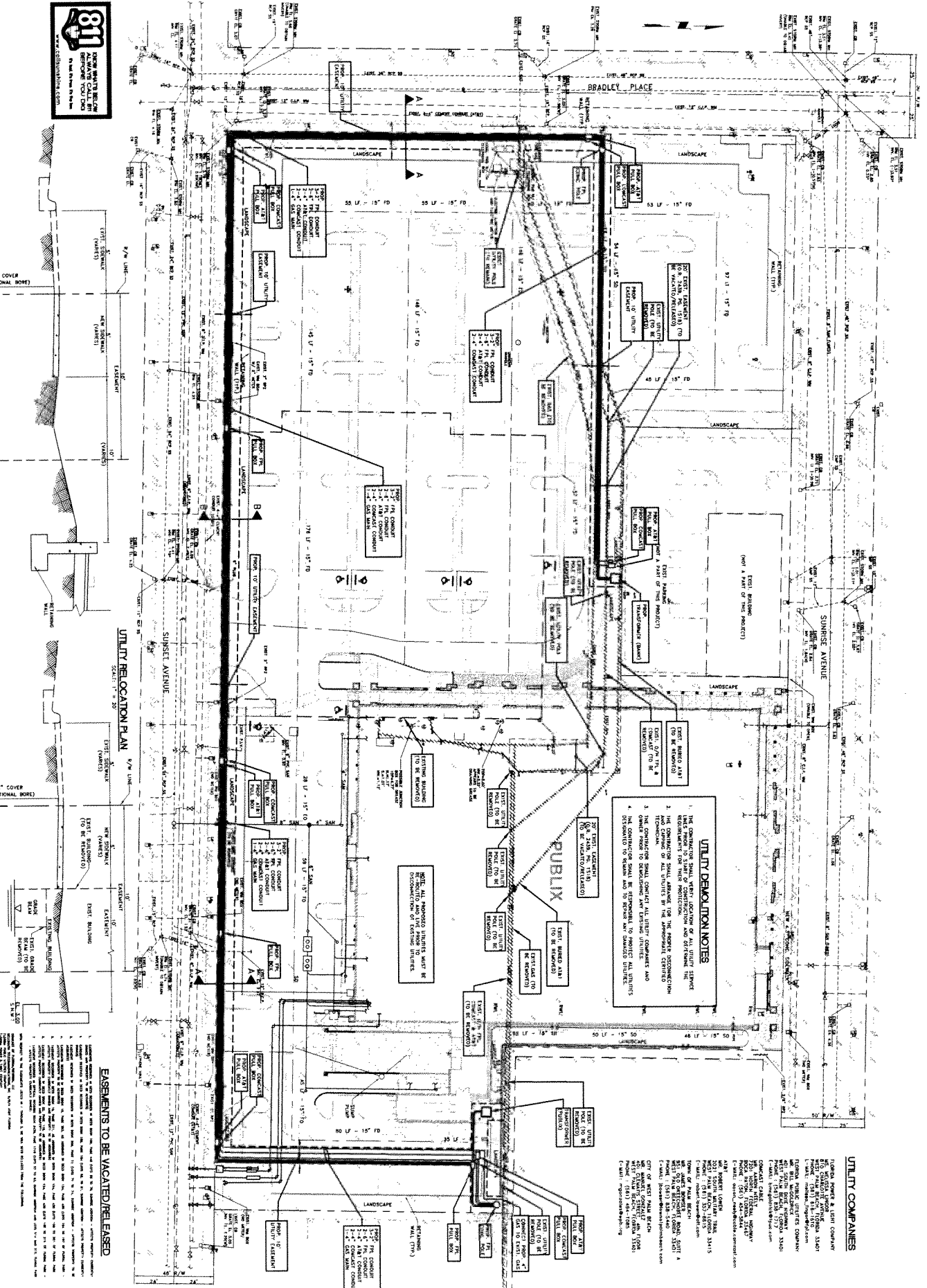
SECTION C-C
SCALE: 1/2" = 1'-0"

SECTION D-D
SCALE: 1/2" = 1'-0"

SECTION E-E
SCALE: 1/2" = 1'-0"

SECTION F-F
SCALE: 1/2" = 1'-0"

SECTION G-G
SCALE: 1/2" = 1'-0"



UTILITY DEMOLITION NOTES

- THE CONTRACTOR SHALL VERIFY LOCATION OF ALL UTILITY SERVICES (GAS, WATER, SEWER, ELEC, TEL) PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL ADVANCE FOR THE PROPOSED DEMOLITION OF ALL UTILITIES BY THE APPROVED DEMOLITION CONTRACTOR.
- THE CONTRACTOR SHALL PROTECT ALL UTILITIES REMAINING ON SITE AND SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES.

UTILITY COMPANIES

FLORIDA POWER & LIGHT COMPANY
1000 N. MILITARY AVE., SUITE 1000
PALM BEACH, FL 33401
TEL: (561) 855-1300
FAX: (561) 855-1301
WWW.FPL.COM

AT&T
1000 N. MILITARY AVE., SUITE 1000
PALM BEACH, FL 33401
TEL: (561) 855-1300
FAX: (561) 855-1301
WWW.ATT.COM

TELECOM
1000 N. MILITARY AVE., SUITE 1000
PALM BEACH, FL 33401
TEL: (561) 855-1300
FAX: (561) 855-1301
WWW.TELCOM.COM

2021 SOUTH ATLANTIC BANK
1000 N. MILITARY AVE., SUITE 1000
PALM BEACH, FL 33401
TEL: (561) 855-1300
FAX: (561) 855-1301
WWW.2021SB.COM

2021 SOUTH ATLANTIC BANK
1000 N. MILITARY AVE., SUITE 1000
PALM BEACH, FL 33401
TEL: (561) 855-1300
FAX: (561) 855-1301
WWW.2021SB.COM

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Development Review - Other

Agenda Title

Demolition Approval Procedures; Establishment of “Special Meetings”; Recommendations From Landmarks Preservation Commission.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated December 1, 2010, from John Page

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Planning, Zoning & Building Department Director

Re: Demolition Approval Procedures
Establishment of "Special Meetings"

Date: December 1, 2010

STAFF RECOMMENDATION

It is recommended that the Town Council give consideration to current procedures regulating building demolition approval, and determine if amendment(s) are necessary to require greater scrutiny of structures that have potential for "landmarking."

It is also recommended that a procedure or legal mechanism be established allowing for special meetings of the Landmarks Preservation Commission to be called (Chapter 54, Historical Preservation contains no such provision).

BOARD OR COMMISSION RECOMMENDATION

The Landmarks Preservation Commission, via Section 54-71 (Certificate of Appropriateness), and Section 18-175 (c)(2), now has oversight of building demolitions for all structures in Town that have been designated as landmarks or which are under consideration for designation. The Commission has no demolition oversight for other structures. That responsibility lies with ARCOM via Section 18-206 (Criteria for Demolition Permit). Recent ARCOM approval of the Breakers Golf Club at 45 Cocoanut Row was processed in accordance with Town Code. The Landmarks Preservation Commission, at its meeting of November 17, 2010, recognized that the building was not landmarked, yet expressed regret that it was not being preserved. Commissioners expressed some frustration that they had no regulatory oversight, and had lengthy conversation about possible changes that would broaden their scope of review in such instances. Following lengthy discussion:

- It was moved by Mr. Feldkamp, seconded by Mr. Cooley, to recommend that the Town Council direct the Town Attorney to draft necessary Ordinance changes that would require demolition of any structure having landmark potential to be reviewed and approved by the Landmarks Preservation Commission. Motion carried unanimously.
- It was moved by Mr. Cooley and seconded by Mr. Moore that Chapter 54 (Historical

Preservation) of the Code of Ordinances be amended to allow for “special meetings” of the Landmarks Preservation Commission to be called. Motion carried unanimously.

GENERAL INFORMATION

The process of approving building demolitions is now bifurcated in Palm Beach. ARCOM reviews all demolition requests except those that pertain to landmarked structures or structures under consideration for designation. ARCOM has no discretion to deny such an application if the applicant satisfies all procedural requirements pertaining to dust protection, pest eradication, preservation of landscaping, sodding, irrigating, etc. The Landmarks Preservation Commission reviews demolition requests for all structures that have been previously designated as landmarks or have been declared to be “under consideration.”

The Town’s Landmarking Program was created in 1979. During its 31 years of existence, 268 various buildings and sites have been officially designated as landmarks. Landmarking is a fluid process, meaning that it could continue indefinitely, with structures being added to the program as additional research into their history occurs, and as local preservation priorities evolve. Time, staffing, and financial limitations have dictated a measured and steady approach. An average of 8.6 sites have been designated as landmarks each year. The Town simply has not allocated resources for designating large numbers of properties to the program at a single time.

Because the Town has been blessed with private structures that reflect social history, may be identified with historic personages, embody distinguishing architecture, and/or are representative of a master builder, there are notable buildings that are not now, but may eventually be designated as landmarks. Occasionally, one of these structures is demolished, causing some members of the public to ask for greater oversight. Examples in recent years include La Ronda at 444 North Lake Way, 144 Wells Road, 45 Cocoanut Row, etc.

Landmark Preservation Commissioners recently posed questions to Jane Day, the Town’s historic preservation consultant, regarding the preservation of notable structures. Dr. Day explained that she is now in the process of completing a Town-sponsored “historic sites survey” as required by the Comprehensive Plan. She expects to complete the survey and report results to the Commission in December this year and to the Town Council in January.

An historic sites survey is a systematic and detailed recording of historic resources within a geographic boundary. Usually these studies consist of an inventory of all structures over fifty years old within a community. The 2010 Palm Beach survey will also include outstanding examples of architecture under fifty years as requested by the Town Council. The methodology for this work includes a review of the historic literature of individual structures, collection and inspection of maps from the County Property Appraiser’s office, and a search of local building permits in an effort to determine the architect, builder, and construction date for each site. Finally, the surveyor visits each property, photographs the present conditions and makes a determination of the potential for landmark status. If the property is not landmarked, the surveyor has three choices for the question on the form titled “*potentially eligible for a local register*.” The response can be yes, no, or insufficient information. At the conclusion of the project a final report is prepared that will give an overview of the history of the Town, a listing

of all properties on the Florida Master Site File, a listing of all properties that have been demolished since the last survey, and recommendations for future action by the Town Council and the Landmarks Commission. There is no legal ramification to a property owner for listing on the Florida Master Site File. It is a planning tool that is fluid in nature and updated periodically as required by the Comprehensive Plan. Past surveys were conducted in 1981, 1988, 1997 and 2004.

The issue of designating a structure as “potentially eligible for a local register” has been a subject of past debate in Palm Beach. All results of the historic sites survey are open and available to the public, yet the Town does not send individual notice to owners bringing their attention to a finding of “potentially eligible,” nor is it common practice in other Florida communities to do so. Robust Town Council discussion of this very sort took place with the Town Council in 2008* when similar questions were posed about preserving structures that have not been landmarked. No changes to the landmarking program (including the issue of providing individual notice to potentially eligible sites/owners) was directed at that time. It should be expected, however, that a legal argument will be made suggesting that notice must be provided to a private property owner if inclusion on a “potentially eligible list” necessitates any additional impediment to obtaining authorization to demolish. Careful consideration of this issue by the Town Attorney will be necessary if the Town Council opts to move forward with Ordinance amendments regulating demolition procedures.

* Questions about “fairness” and “notice” regarding potentially eligible properties were discussed by the Council’s ORS Committee on August 26, 2008, and at subsequent Town Council meetings on September 8, 2008 and October 13, 2008. Mr. Coleman was particularly concerned that owners of homes that have been noted as “potentially eligible” for landmarking should be notified of such finding because it may affect their future property rights. The continued discussion included questions about the number of such structures, the resources necessary to research and prepare designation reports, existing Code requirements, the limited number of homes that can be realistically designated during a single season, and legalities. Dr. Jane Day participated in portions of this continuing discussion. No changes to the process were implemented.

FUNDING/FISCAL IMPACT

There is no direct financial cost to the Town for amending local Code regulating the process by which review of demolition applications must occur. Be advised, however, that the amount of money budgeted for Dr. Day has been relatively static at \$45,000 - \$50,000 for many years. That annual expenditure includes the time and preparation necessary on her behalf to complete all research and prepare designation reports leading up to landmarking status. Any appreciable change in the number of properties to be considered for landmarking will drive this cost upward.

SPECIAL CONSIDERATIONS

If it is determined that the Code-required process for reviewing demolition requests is to be changed, care should be taken to see that the process does not become overly cumbersome. It is conceivable that some applications for demolition and new construction thereafter would have to

go to both the Landmarks Preservation Commission and the Architectural Commission. The Town should strive to make the final process as user-friendly as possible.

xc: Landmarks Preservation Commissioners
John C. Randolph, Town Attorney
Jane Day, Research Atlantica
John C. Lindgren, Planning Administrator

TOWN OF PALM BEACH

Town Council Meeting on: December 15, 2010

Section of Agenda

Development Review - Other

Agenda Title

Proposed Comprehensive Plan and Zoning Text Amendments for a Proposal to Allow Nonconforming Buildings and Structures to be Rebuilt.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated December 2, 2010, from John Page

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director, Planning, Zoning and Building

Re: Proposed Comprehensive Plan Amendments and Zoning Text Amendments for a Proposal to Allow Nonconforming Buildings and Structures to be Rebuilt

Date: December 2, 2010

STAFF RECOMMENDATION

It is recommended that the Town Council direct staff to draft zoning and comprehensive plan amendment ordinances incorporating the recommendation of the Planning and Zoning Commission.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its November 16, 2010 meeting, considered proposed code changes that would allow all nonconforming buildings and structures to be rebuilt to the same size and on the same footprint. After public input and careful consideration, the Commission made the following recommendations (revised from the attached draft proposal considered at the Commission's November 16, 2010 meeting):

1. Retain the existing nonconforming provisions which do not allow for voluntary demolition and reconstruction of nonconforming buildings and structures by more than 50% cubic footage.
2. Modify the nonconforming provisions to allow for the reconstruction of all nonconforming buildings and structures in their original location to their original size and configuration if demolished by more than 50% cubic footage by a natural disaster or fire.

BACKGROUND

The Town's Comprehensive Plan and Chapter 134, Zoning, in the Code of Ordinances, does not allow a nonconforming building or structure to be voluntarily demolished and rebuilt on the same footprint, to the same size, if said demolition exceeds more than 50 percent of the cubic footage of the building or structure. The same is true for nonconforming buildings destroyed by a hurricane or other disaster. The only type of nonconforming building or structure that is allowed to be rebuilt if destruction exceeds 50% cubic footage is a designated landmark, single-family dwelling, public structure or a public/private group use.

The Planning and Zoning Commission, at its September 21, 2010 meeting, discussed the possibility of changing the nonconforming regulations to allow property owners to demolish and rebuild old buildings. They also expressed concern over the fact that in the event of a major hurricane, all of the Proposed Comprehensive Plan Amendments and Zoning Text Amendments for a Proposal to Allow

multi-family, mid-rise buildings along the Ocean most likely could not be rebuilt to the same size and density that now exists. The Commission directed Staff to evaluate and draft proposed language that would allow property owners to voluntarily demolish and rebuild a nonconforming building or structure on the same footprint and to the same size and configuration. Staff was also asked to draft similar language for nonconforming buildings destroyed by more than 50 percent cubic footage by a natural disaster or fire.

The Planning and Zoning Commission, at its November 16, 2010 meeting, considered the proposed changes. After careful consideration, the Commission determined that it is not prudent to eliminate the nonconforming provisions related to voluntary demolition and reconstruction on all nonconforming buildings in the Town. The Commission believes, and Staff concurs, that such a change would be in contradiction to the overall intent of the nonconforming provisions which are intended to reduce or eliminate nonconforming buildings over time. The Commission did, however, unanimously recommend to change the code to allow all buildings and structures to be rebuilt if damaged by an act of nature (such as a hurricane) or if destroyed by fire. Staff also concurs with this recommendation.

Staff is concerned that the State may not allow any buildings east or partially east of the Coastal Construction Control Line to be rebuilt if destroyed by an act of nature or fire. For that reason the proposed language reflects the need to also obtain required State or Federal permission to rebuild in those situations. The Town would assist property owners in such cases, but the State has final jurisdiction over reconstruction approval along the coast.

COMPREHENSIVE PLAN

The possible amendments to the Comprehensive Plan are in the attached draft proposal considered at the Commission's November 16, 2010 meeting.

If you have any questions about any of the attached information, please contact Paul Castro, Zoning Administrator, at 227-6406.

**STAFF MATERIAL PRESENTED TO THE PLANNING AND ZONING COMMISSION
(NOVEMBER 16, 2010)**

Comprehensive Plan Amendments

(Proposed added language underlined; proposed removed language ~~stricken~~)

Data & Analysis – page I-4:

There are remedial and preventative strategies that can be employed to cope with these basic problems. The three most basic land use protection strategies for Palm Beach are to:

- Discourage the amount and type of region-serving commercial development while encouraging Town-serving ones.
- Control the pace, type, and intensity of redevelopment activity in older areas of Town.
- Encourage development and redevelopment at lower density levels than existing zoning allows, except for redevelopment seaward of the coastal construction control line (CCCL), where maintaining previous densities and/or intensities are allowed (and with approval from FDEP).

Data & Analysis – pages I-19 – I-21:

Single-Family Uses

This is the most predominant land use in the Town. The Future Land Use Plan Map designates 1,103 acres of land for this use of which about 48 acres are vacant. The preferred locations are those with good visual qualities, buffered from annoying traffic influences with easy access to shopping and recreation.

Appropriate uses include estates, single-family homes, residential PUD's and cluster development up to a maximum density of four dwelling units per gross Palm Beach acre (40,000 square feet). Public uses and facilities, public and private schools, group homes and foster care facilities, essential services, and private group uses and cultural uses are also permitted within this category on a limited basis.

It is estimated that another 85 single-family dwelling units can be accommodated at an average density of 1.8 units per acre. Density and/or intensity of a site can exceed what is permitted by code if the density/intensity exists, and will not be increased through redevelopment. For developed single-family

lots and vacant single-family lots in existence for at least 30 years, a single-family home can be rebuilt or built subject to meeting all land development regulations.

Multi-Family Uses

Two multi-family categories, permitting varying densities and uses, are shown on the Future Land Use Plan. In total, the Future Land Use Plan designates about 343 acres of land for this use of which about 8 acres are vacant. Some of these lands are undevelopable, or have been committed to open space associated with other residential units, and most cannot be developed at maximum allowable density due to limited parcel sizes. Consequently, it is estimated that these vacant lands can accommodate about 35 additional multi-family units.

The preferred locations are adjacent to high accessibility corridors, areas with good visual qualities, near commercial centers, and recreation and open space areas to offset effects of higher density.

Multi-Family Moderate Density: Appropriate uses include single-family and two-family homes, townhouses, multi-family units, and residential and mixed-use PUD's up to a maximum density of six dwelling units per gross Palm Beach acre (40,000 square feet); public uses and facilities; public and private schools; private group uses; group homes and foster care facilities; and essential services. The Plan designates about 117 acres of land for this use.

Multi-Family High Density: Appropriate uses include single-family and two-family homes, townhouses, multi-family units, and residential and mixed use PUD's up to a maximum density of thirteen dwelling units per gross Palm Beach acre (40,000 square feet). Hotels up to 26 units/gross Palm Beach acre along with associated accessory commercial uses and time-sharing uses up to 9 units/gross Palm Beach acre may be appropriate under carefully controlled conditions. Other appropriate uses include public uses and facilities, public and private schools, private group uses, group homes and foster care facilities, and essential services. The Plan designates about 226 acres of land for this use. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development regulations, may be rebuilt at the same density and/or intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Commercial Uses

While only one commercial category is specifically identified on the Future Land Use Plan Map, the Town provides for commercial uses at varying intensities under different zoning categories. The Plan designates about 93 acres for commercial uses, of which only about one-half acre remains vacant. Appropriate uses include a wide range of commercial retail, service, professional and business uses

largely intended to serve Town persons; hotels, motels and time-sharing uses; public uses and facilities; public and private schools; private group uses; and residential uses located above the ground floor. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development regulations, may be rebuilt at the same density and/or intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Public Uses

The Plan designates approximately four acres of land for this use. Appropriate uses include public schools, low intensity public facilities at a scale and intensity necessary to primarily serve the needs of Town persons, and owned, operated, franchised, or supervised by a governmental agency. The designation of a property for Public Use on the Future Land Use Plan Map recognizes the current use of the property; and, further, that such properties may also be appropriate for residential or commercial development. The Zoning Ordinance is the tool which indicates those uses which are specifically allowed. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development regulations, may be rebuilt at the same intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Recreation Uses

The Plan designates approximately 106 acres of land for this use. This category is intended for low intensity public recreational uses or activities at a scale and intensity necessary to primarily serve the needs of Town persons, and to preserve the natural and scenic resources of the Town. Only public facilities, owned, operated, franchised or supervised by a public governmental entity, are given this designation. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development regulations, may be rebuilt at the same intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Private Group Uses

The Plan designates approximately 219 acres of land for this use. Appropriate uses include low intensity private clubs, golf and country clubs, houses of worship, museums and non-commercial recreation-type or cultural uses at a scale and intensity intended to primarily serve the needs of Town

persons. The designation of a property for Private Group Use on the Future Land Use Plan Map recognizes the current use of the property; and, further, indicates that such properties may also be appropriate for residential or commercial development. The Zoning Ordinance is the tool which indicates those uses which are specifically allowed or prohibited. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development

regulations, may be rebuilt at the same density and/or intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Approved PUD

This category represents Planned Unit Developments that have been approved by the Town Council. The Plan designates approximately 168 acres of land for this use. Only the Breaker's PUD contains remaining development potential. If built to maximum density, this PUD could hold another 251 multi-family units and some commercial development. Densities in new PUD's shall be limited to the maximum density allowable in the land use category and zoning district in which they are located prior to their approval, but shall not exceed thirteen units per acre. Nonconforming buildings or structures, which may exceed what is permitted in this land use category and the land development regulations, may be rebuilt at the same density and/or intensity provided that the new buildings or structures are on the same footprint and are the same size and configuration as those nonconforming buildings or structures being replaced.

Conservation

This category is intended primarily for the spoil islands in Lake Worth and submerged lands located within the Town's boundary and located west of the MHWL in Lake Worth and which comprise about 39 acres. An additional 3-acre conservation parcel is located south of Southern Boulevard in the Blossom Estate subdivision. Both areas are unique, and will be preserved and protected from development and the negative impacts of public use.

Maps I-1 through I-7, comprising the Town's Future Land Use Map Series, provide mapping of future land use, recreation areas and their general service areas, historic sites and districts, beaches and shores, wetlands and estuarine areas, flood plains, and soils, follow. There are no existing or planned waterwells, cones of influence, rivers, bays, fresh water lakes, harbors, or economic mineral deposits in the Town of Palm Beach.

GOPs – page I-54:
OBJECTIVE 7

The number of uses incompatible with the range and location of land uses, identified in the Town's Future Land Use Plan Map, shall be reduced by attrition; and, no new uses shall be permitted that are inconsistent with the community's character and the Town's Future Land Use Plan Map.

POLICY 7.1

The Town shall amend its land development regulations to be compatible and consistent with the range and location of land uses identified on the Town's Future Land Use Plan.

POLICY 7.2

The Town shall prohibit replacement or expansion of uses found to be incompatible or inconsistent with the range and location of land uses identified on the Town's Future Land Use Map and Official Zoning Map.

POLICY 7.3

The Town shall continue to require that:

- a. Designated landmark structures, single-family dwellings, two-family, townhouse, multi-family, commercial, and public structures or public/private group uses located seaward of the CCCL, which suffer damage in excess of 50%, may be rebuilt in their existing locations, to their existing sizes, provided FDEP standards are met.
- b. ~~Two-family, townhouse and multi-family structures located seaward of the CCCL, which suffer damage in excess of 50% may be rebuilt seaward of the CCCL provided FDEP standards and all land development regulations of the Town, including current density limitations, are met.~~

PROPOSED ZONING TEXT AMENDMENTS

(proposed added language underlined; proposed removed language ~~stricken~~)

Sec. 134-416. Continuation; definition; intent.

(a) A building or structure, lawfully in existence at the effective date of the ordinance from which this chapter is derived, which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto, may be continued except as otherwise provided in this article.

(b) A building structure is, for the purpose of this chapter, nonconforming if the building or structure or any physical characteristics thereof is not in full compliance with all regulations of the zoning district in which it is situated.

(c) The intent of this division is that, by the provisions of this chapter or by amendments that may be adopted, there may exist buildings or structures which were lawful before this chapter was adopted or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments thereto. It is the intent of this chapter to permit these nonconforming buildings and structures to exist and survive. ~~until they are voluntarily removed, removed as required by this chapter, but not to encourage their survival.~~

(d) It is further the intent of this chapter that nonconforming buildings and structures ~~shall not be~~ shall be allowed to be enlarged upon, expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not ~~or~~ used as grounds for adding other buildings or structures prohibited elsewhere in the same district.

Sec. 134-417. Extension or expansion.

A building or structure which is nonconforming with any of the lot, yard and bulk regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. ~~This section shall not apply to a building or structure which is demolished by more than 50 percent, as determined by cubic footage, in preparation for any proposed enlargement, expansion, or extension of a building or structure.~~

Sec. 134-418. Conversion to conforming building or structure.

For any building or structure or part thereof, in which a nonconformity of the building or structure or part thereof is altered, changed or replaced by a conforming building or structure, the terminated nonconformity shall not thereafter be resumed nor shall any additional nonconformity be permitted.

Sec. 134-419, ~~Enlargement, extension, r~~Reconstruction or alteration.

No nonconforming building or structure shall be enlarged; or extended, reconstructed or structurally altered except; as provided for in Sec. 134-416, 134-417 and 134-418, or when required to do so by law as follows:

- (1) *Voluntary demolition, restoration and reconstruction.* A nonconforming building and/or structure may be restored as before, ~~enlarged, extended or partially demolished~~ and reconstructed provided that such demolition, restoration, enlargement, extension or expansion does not exceed 50 percent of its existing cubic footage and provided that the demolition, restoration, enlargement, extension or reconstruction of the building and/or structure does not exceed the floor area, gross leasable area and/or cubic footage which existed prior to the demolition, restoration, enlargement, extension, or reconstruction and any restoration or reconstruction is to its original size, location and configuration.

All demolition, restoration, enlargement, extension or reconstruction shall be completed within the time schedule set forth in the construction schedule section 105.4.1.6 of the Florida Building Code as amended in section 18-242. In the event such demolition, restoration, enlargement, extension or reconstruction is not completed within the time frame required by the Building code, construction shall cease and shall not resume until the town council decides the remedy for noncompliance, and review and approves a completion schedule.

- (2) *Alteration and repairs.* Normal maintenance and repair and incidental alteration of a nonconforming building or structure is permitted, provided it does not increase the area, volume or size. A building used for single-family or multi-family residential purposes may be altered in any way to improve interior livability; provided, however, that no alterations shall be made which would increase the number of dwelling units. Single-family dwellings may be added onto or partially demolished in accordance with sections 134-794, 134-844, 134-894, 134-1005 and 134-1060
- (3) *Minimum flood elevation.* A nonconforming building may be raised to meet the minimum town flood elevation provided:
 - a. That the height as measured from the raised finished floor to the bottom of the top chord of the roof framing member for a pitched roof and the ceiling of a flat roof does not get any taller.
 - b. That the overall height as measured from the raised finished floor elevation to the top of the roof for a pitched roof, and top of the ceiling and parapet for a flat roof does not get any taller.
 - c. The building footprint within the required setbacks is no larger; and is no closer to the property line than it was prior to being raised; ~~and.~~

- d. That any new additions meeting existing lot, yard and bulk regulations.

Sec. 134-420. Destruction or partial destruction.

(a) Any nonconforming building structure which is destroyed by fire or act of nature, ~~to the extent that 50 percent or less, as determined by cubic footage prior to its destruction, can be reconstructed in its original location to its original size and configuration provided that for residential use, the property does not exceed the existing density. the following conditions are met.~~ In addition, if said building structure did not meet the town's minimum flood elevation requirements, the rebuilt building structure ~~can~~ shall be raised to meet said requirements if the damage to the structure exceeds 50 percent of the market value.

~~(1) The structure met the minimum flood elevation requirements prior to such destruction;~~
~~or~~

~~(2) If said structure did not meet the minimum flood elevation requirements prior to such destruction, and said reconstruction exceeds 50 percent of the market value which results in a FEMA requirement that the structure be raised, said structure can be raised to meet the minimum flood elevation.~~

~~(b) A nonconforming structure which is destroyed by fire or act of nature, to the extent of more than 50 percent, as determined by cubic footage prior to its destruction, shall be rebuilt only as a conforming structure except:~~

~~(1) A nonconforming designated landmark, single-family dwelling, public structure or public/private group use structure which is entirely west of the coastal construction control line can be reconstructed in its original size and configuration.~~

~~(2) Any designated landmark, single-family dwelling, public structure or public/private group use that~~ (b) If said building or structure is located partially or entirely east of the coastal construction control line, said building or structure may be rebuilt to the maximum extent possible in its original location to its original size and configuration provided it meets all local, state and federal requirements for a buildings and/or structures located east of the coastal construction control line.

cc: Mayor and Town Council
Planning and Zoning Commission
Peter B. Elwell, Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Cheryl Somers, Acting Town Clerk
Paul W. Castro, Zoning Administrator
John Lindgren, Planning Administrator
zf

EXHIBIT D - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district
2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.
3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.
4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. For granting of a variance to sections 134-387, or 134-390 through 134-392, pertaining to the regulation of nonconforming uses, the following additional findings must be demonstrated pertaining to the nonconforming use for which the variance is requested:
 - a. It is the continuance of a unique hotel or residential use that has, for at least 15 years proven compatible with the surrounding uses; and
 - b. Neither rezoning to a district which would allow the use, nor inclusion of the subject use as a permitted or special exception use in the district would act to achieve the preservation of the subject use without opening the possibility of the incursion of uses incompatible with the immediately surrounding area and, further, such variance shall
 1. Be granted only for the continuation of the same hotel or residential use; and,
 2. Require the applicant to submit a declaration of use limiting the utilization of the property for which the variance was granted to the same use as that existing at the time the variance was granted.
7. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

JAMES C. PAINE, JR.
Attorney at Law
Architect

2831 Exchange Court, Suite "A"
West Palm Beach, Florida 33409

Telephone (561) 346-4685
Facsimile (561) 686-5862

November 30, 2010

Jeff Taylor, Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Waiver of Section 42-199 for 221 Worth Avenue, Palm Beach, Florida

Dear Mr. Taylor:

I represent Burton Handelsman and Love LLC in connection with proposed improvements to the tenant space at 221 Worth Avenue and on their behalf would like to appear before the December 15, 2010 Town Council meeting to request a waiver from Section 42-199 of the Town of Palm Beach Code to extend construction work on Worth Avenue from January 3, 2011 until January 31, 2011. The work during the season will not include weekends or holidays and all workers and deliveries will access the site via Peruvian Avenue except for the one day that the storefront glass is delivered and installed. The waiver is necessary because the decision to improve the space was dependant upon circumstances not known until recently and now time is of the essence.

Please contact me if you have any questions concerning this request.

Thank you very much.

Sincerely,



James C. Paine, Jr.